

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NATIONAL RIFLE ASSOCIATION OF
AMERICA,

Plaintiff and Counter-Defendant,

and

WAYNE LAPIERRE,

Third-Party Defendant,

V.

ACKERMAN MCQUEEN, INC.,

Defendant and Counter-Plaintiff,

and

MERCURY GROUP, INC., HENRY
MARTIN, WILLIAM WINKLER,
MELANIE MONTGOMERY, and
JESSE GREENBERG,

Defendants.

DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Defendants, Ackerman McQueen, Inc. (“*AMc*”), Mercury Group, Inc. (“*Mercury Group*”), Henry Martin (“*Martin*”), William Winkler (“*Winkler*”), Melanie Montgomery (“*Montgomery*”), and Jesse Greenberg (“*Greenberg*”) (collectively, “*Defendants*”), file this motion to dismiss the claims against them pursuant to Fed. R. Civ. P. 12(b)(6).

1. As is set forth more particularly in the brief filed contemporaneously herewith, Counts One of the NRA's Amended Complaint (doc. 18) fails to state a claim for false association

under the Lanham Act because it does not allege: (i) a commercial injury; (ii) that Defendants used a false designation of origin, false or misleading description of fact, or false or misleading representation of fact that was likely to cause confusion; or (iii) sufficient facts to support a false association claim against Mercury or Martin, Winkler, Montgomery, and Greenberg (collectively, the “*Individual Defendants*”).

2. Count Two of the Amended Complaint fails to state a claim for copyright infringement because (i) the NRA has not alleged the existence of a registered copyrightable work and, (ii) in any event, the Complaint is conclusory with respect to the alleged acts of infringement by Mercury and the Individual Defendants.

3. Count Three of the Amended Complaint fails to state a claim for conversion because the Amended Complaint: (i) demonstrates on its face that the Copyright Act preempts the claim; and (ii) does not allege all of the essential elements of conversion against Mercury or the Individual Defendants.

4. Count Four (fraud) and Count Six (conspiracy) fail to state a claim, at least with respect to Mercury, because the NRA does not allege a single fact to support a fraud or conspiracy claim against Mercury.

5. Finally, Counts Five and Seven fail to state a valid claim for breach of fiduciary duty with respect to the Individual Defendants because the Amended Complaint fails to allege sufficient facts to support the existence of a formal or informal fiduciary relationship between the parties.

6. In accordance with the Local Rules, this motion is supported by Defendants’ Brief filed contemporaneously herewith, which sets forth Defendants’ contentions of fact and/or law

and argument and authorities. The evidence in support of this motion is contained in the Appendix filed contemporaneously herewith.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request and pray that the Court grant them the following relief:

- a. dismiss Count One (Lanham Act) and Count Three (conversion) in their entirety against all Defendants;
- b. dismiss Count Two (copyright infringement), Count Five (breach of fiduciary duty), and Count Seven (breach of fiduciary duty of loyalty) in their entirety against Mercury and the Individual Defendants;
- c. dismiss Count Four (fraud) and Count Six (conspiracy) against Mercury; and
- d. grant Defendants any and all such other and further relief at law or in equity to which they may be justly entitled.

Dated: November 15, 2019.

Respectfully submitted,

/s/ Brian Vanderwoude

Jay J. Madrid, Esq.

Texas Bar No. 12802000

madrid.jay@dorsey.com

G. Michael Gruber, Esq.

Texas Bar No. 08555400

gruber.mike@dorsey.com

J. Brian Vanderwoude, Esq.

Texas Bar No. 24047558

vanderwoude.brian@dorsey.com

Brian E. Mason, Esq.

Texas Bar No. 24079906

mason.brian@dorsey.com

DORSEY & WHITNEY LLP

300 Crescent Court, Suite 400

Dallas, Texas 75201

(214) 981-9900 Phone

(214) 981-9901 Facsimile

**ATTORNEYS FOR DEFENDANTS ACKERMAN
MCQUEEN, INC., MERCURY GROUP, INC.,
HENRY MARTIN, JESSE GREENBERG,
WILLIAM WINKLER, AND MELANIE
MONTGOMERY**

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2019, I filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas. I hereby certify that I have served the document on all counsel and/or pro se parties of record by a manner authorized by Federal Rules of Civil Procedure 5(b)(2).

/s/ Brian Vanderwoude

J. Brian Vanderwoude, Esq.